

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08 MD 1932**

**IN RE FAMILY DOLLAR FLSA
LITIGATION,**)
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THIS MATTER is before the Court on Plaintiffs’ Motion to Dismiss Plaintiffs Barbara Brown and Erica Lewis filed August 14, 2009 (Doc. No. 293); Defendant’s Motion to Dismiss Plaintiffs for Failure to Attend Depositions and Failure to Prosecute filed July 21, 2009 (Doc. No. 202); Defendant’s Notice of Plaintiffs’ Non-response to Defendant’s Motion to Dismiss, filed August 10, 2009 (Doc. No. 284); and Plaintiffs’ Opposition to Defendant’s Motion to Dismiss, filed August 11, 2009 (Doc. No. 286).

Defendant contends that on July 15, 2009, less than one week before Intervenor Erica Lewis’ scheduled July 21, 2009 deposition, Plaintiff’s counsel sent Family Dollar a letter stating that “Erica Lewis, who is scheduled to be deposed in Orlando, has just informed us that she is not going to proceed with her deposition.”¹ On July 16, 2009, Plaintiff’s counsel sent Family Dollar an e-mail stating that Barbara Brown’s deposition, which was scheduled for July 22, 2009, was to be canceled because “[Plaintiffs] have not heard from [her].”

¹ The Court notes that while Defendant stated in their motion that Plaintiff counsel indicated that Plaintiff’s request to withdraw may be forthcoming, the Court has reviewed the correspondence between counsel which clearly stated that “[w]e will be getting you {Plaintiff’s} request to withdraw as soon as we receive the signed copy back, and we will be filling it with the Court.” Deft’s Motion to Dismiss at Ex. 4.

Plaintiffs contend they advised Defendant's counsel prior to the Defendant filing its Motion to Dismiss that Plaintiff's counsel did not oppose Brown's and Lewis's claims being dismissed. Plaintiff's counsel, however, was unable to file a motion to dismiss prior to receiving written consent from Ms. Brown and Ms. Lewis. Counsel has now received such written permission for Mr. Brown and Ms. Lewis and has filed the instant Motion to Dismiss. Further, Plaintiffs' counsel advised counsel for Family Dollar that Ms. Brown and Ms. Lewis would not be appearing for their scheduled depositions prior to such depositions.²

The Court will Grant Plaintiffs' Motion to Dismiss (Doc. No. 293) and Deny Defendant's Motion to Dismiss Plaintiffs for Failure to Attend Depositions and Failure to Prosecute (Doc. No. 202).

THEREFORE IT IS ORDERED that:

(1) Defendant's Motion to Dismiss Plaintiffs for to Attend Depositions and Failure to Prosecute (Doc. No. 202) is DENIED; and

(2) Plaintiffs' Motion to Dismiss Plaintiffs Barbara Brown and Erica Lewis (Doc. No. 293) is GRANTED.

SO ORDERED.

Signed: August 14, 2009



Graham C. Mullen
United States District Judge



² The Court notes that Plaintiffs' counsel advised counsel for Family Dollar that Ms. Brown and Ms. Lewis would not be appearing for their depositions approximately six days prior to the depositions.